IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/10/2003

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THE HONOURABLE MR. JUSTICE P.K.MISRA

WRIT PETITION No.25524 of 2001

B.Lakshmi ..... Petitioner

-Vs-

1.The AIR Officer i/c Personnel
AIR Head Quarters,
Directorate of Personnel (Civilian)
Vayu Bhavan,
New Delhi 110 011.

2.The Air Officer Commanding in Chief
Headquarters Maintenance Command (IAF)
Vayusena Nagar,
Nagpur-7.

3.The Air Commadore,
Air Force Commanding,
23, Equipment Department,
Air Force Station,
Avadi, Chennai-55. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for the issue of a Writ of Certiorarified Mandamus for the reasons
stated therein.

For Petitioners :: Mr.K.N.Natarajan for
M/s.G.Veerapathiran.

For Respondents :: Mr.K.Gunasekaran

:O R D E R
Heard the learned counsel appearing for the parties.

2. The petitioner has prayed for the issuance of a Writ of
Certiorarified Mandamus, calling for the records of the respondent passed on
14.9.1999 in MC 5901/77/MAD/Pc and the consequential rejection order Air
HQ/23071/4/PG-2000/Pc5 dated 17.5.2000 of the first respondent herein and

quash the same and to direct the respondents to consider the claim of the petitioner for appointment to any post suitable to the age on compassionate grounds.

3. The petitioner's husband was appointed as Mazdoor Master with effect from December 1973 and subsequently posted as Lascar in April 19 92. While in service, he expired on 10.2.1997. Thereafter, the petitioner filed application for employment in Group 'D' Post on compassionate ground. Under the impugned communication, it was indicated that her case has been considered in three consecutive reviews and was finally rejected.

4. Learned counsel for the petitioner has contended that since the husband of the petitioner had died in harness and the petitioner did not have any independent source of income, she should have been appointed on compassionate ground.

5. A counter-affidavit has been filed on behalf of the respondent, wherein it is indicated that the case of the petitioner was considered in three consecutive reviews during the quarters June 1998, September 1998 and December 1998 and since the petitioner did not come within the list, a rejection order was communicated to her. It has been submitted in the counter that as per the existing instructions, the employment on compassionate ground can be made only upto a maximum of 5% of vacancies arising in a year. The applications are considered on merit, depending upon the various circumstances and only those who fall within 5% of vacancies are given appointment on compassionate ground. It has been further indicated that as per the policy, a particular application is considered and if the applicant is not found suitable or the applicant does not come within the limited list, such application is again considered for a second time alongwith other eligible applicants and thereafter, if the person is not selected, such application is again considered for third and final time.

6. Counsel for the respondent has produced intimation issued to all Units under maintenance command IAF in paragraph (e) of such intimation dated 29.12.1992 is relevant, which is extracted below:-

"(e) applications received during the quarter are considered during the succeeding month. The applicants who cannot be offered employment based on one consideration are considered again alongwith fresh applications received during the second and if necessary during the third quarters. However, in case it has not been feasible to offer employment based on three considerations, the application is rejected and all concerned are intimated accordingly".

7. In the present case, such procedure had been adopted and the petitioner did not come within the stipulated numbers and therefore her application was rejected and the communication for the same was issued to her.

8. Learned counsel appearing for the petitioner has placed reliance upon the decision reported in 1994 I SCC 192=1994 AIR SC 1521=1994 (1) LLN 566 (Auditor General of India vs. G.Ananta Rajeswara Rao), JT 1994

(3) 525 (Umesh Kumar Nagpal vs. State of Haryana and Others) and of the Punjab High Court decision reported in 1992 (6) SLR 90 (Pushpa Rani alias Neena vs. The State of Punjab through its Secretary Department of Revenue, Civil Secretariat Punjab Chandigarh and another).

9. There is no dispute regarding the principles enunciated in the aforesaid decisions. There is also no dispute that the question of compassionate appointment should be considered. However, nowhere it has been laid down that on the death of the employee, the legal representative has got absolute right to employment. Obviously, all the vacancies cannot be filled up through the process of compassionate appointment. In the present case, as contended by the counsel appearing for the respondent, it appears that the respondent has fixed that 5% of the vacancies should be filled up through the process of compassionate appointment. When number of application are more, obviously, the applications have to be considered, keeping in view the main objective and the more deserving person is to be employed in preference to less deserving. Obviously, such consideration has to be based on relevant circumstances including nature of indigency, number of dependants etc.

10. In the present case, it has been indicated that the application of the petitioner has been considered and since more number of applicants were there, some other persons were selected and not the petitioner. Nothing has been indicated by the petitioner to show any arbitrariness in the decision or to impugn the method applied by the respondent.

11. For the aforesaid reason, I am not inclined to issue any writ in the matter. The writ petition is accordingly rejected. It is however made clear that the question as to whether the policy as incorporated in this intimation letter dated 29.12.1992 is valid or not has not been decided in this case, as such a question has not been raised. No costs.

Index : Yes.
Internet: Yes.

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To

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